

¹Following the filing of the first motion, plaintiff submitted letters, requested appointment of counsel, and indirectly explained his reason for not filing a grievance appeal, but he did not directly respond in opposition to the motion. Further, he did not respond in any manner to the second motion.

administrative process but did not complete it by filing a Grievance Appeal and waiting the designated time for a response prior to filing this lawsuit. In letters requesting appointment of counsel, plaintiff concedes he did not file the grievance appeal, but suggests he did not do so because he was sent to see a specialist for his medical needs. He claims he did not receive necessary treatment, but was tricked into not filing the appeal on the basis that he was finally going to get some help.

On July 8, 2009, defendant McGuire filed a motion to dismiss on the basis that plaintiff failed to state a claim against her and that he failed to exhaust his administrative remedies. Plaintiff did not respond in any manner to McGuire's motion and suggestions. McGuire asserts the claims against her were based on the doctrine of respondeat superior² because plaintiff claims she "signed off" on the grievance without further investigation. Defendant states "[t]here is no constitutional requirement that [she] interfere with or overrule medical decisions made by trained medical professionals." (Doc. 26 at 5.) Further, defendant states plaintiff failed to file a grievance appeal and to complete step 3 of the grievance procedure.

Title 42 U.S.C. § 1997e(a) provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Exhaustion of all administrative remedies as set forth by the Missouri Department of Corrections Offender Grievance Procedures must be completed prior to a prisoner filing suit. See Johnson v. Jones, 340 F.3d 624, 628 (8th Cir. 2003) (dismissal is required under section 1997e(a) if an inmate has failed to exhaust all available administrative remedies *prior* to filing suit). When multiple prison conditions claims have been joined, the plain language of section 1997e(a) requires that all available prison grievance remedies must be exhausted as to all

²A supervisor cannot be held liable under section 1983 for an employee's unconstitutional actions. Boyd v. Knox, 47 F.3d 966, 968 (8th Cir. 1995); Choate v. Lockhart, 7 F.3d 1370, 1376 (8th Cir. 1993); Givens v. Jones, 900 F.2d 1229, 1233 (8th Cir. 1990). Instead, a supervisor can be held liable only for personal involvement in a constitutional violation, or when his or her corrective inaction amounts to deliberate indifference or tacit authorization of the violation. Boyd, 47 F.3d at 968; Fruit v. Norris, 905 F.2d 1147, 1151 (8th Cir. 1990).

claims on which a prisoner is seeking relief. Graves v. Norris, 218 F.3d 884, 885 (8th Cir. 2000) (per curiam). Exhaustion of all administrative remedies means that a prisoner must use all steps that the Department of Corrections requires and must follow such steps properly. Woodford v. Ngo, 548 U.S. 81 (2006) (section 1997e(a) requires proper exhaustion of administrative remedies). A prisoner must complete the administrative review process in accordance with applicable procedural rules, including deadlines, as a precondition to bringing suit in federal court. Id.

Here, plaintiff did not complete the administrative process by filing grievance appeals. He has failed to exhaust his administrative remedies, failed to respond to a court order and failed to prosecute his claims.

IT IS, THEREFORE, ORDERED that plaintiff's claims are dismissed, without prejudice, for failure to exhaust administrative remedies, pursuant to 42 U.S.C. § 1997e. [15, 25]

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: January 21, 2010
Jefferson City, Missouri